

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA :  
:  
- v. - : S1 17 Cr. 61 (LAP)  
:  
GARY TANNER, :  
a/k/a "Brian Wilson," and :  
ANDREW DAVENPORT, :  
:  
Defendants. :  
:  
- - - - - X

**GOVERNMENT'S PROPOSED  
EXAMINATION OF PROSPECTIVE JURORS**

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- Of Counsel -

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors. The Court is requested to pursue more detailed questioning at the sidebar or in the robing room if a prospective juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the prospective juror in favor of or against either the Government or the defendant.

**The Charges and Knowledge of the Allegations**

1. This is a criminal case. The defendants, GARY TANNER, also known as "Brian Wilson," and ANDREW DAVENPORT, have

been charged in an indictment with committing several federal crimes.

2. The indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I would like to summarize the charges in this case in order to determine whether there is anything about the nature of this case which may make it difficult or inappropriate for any of you to serve on the jury.

3. The indictment charges the defendants with the following crimes: (a) participation in a scheme to deprive a company called Valeant Pharmaceuticals International, Inc., a pharmaceutical company, of the honest services to which it is entitled from one of its employees, through the payment of bribes and kickbacks; (b) the solicitation, acceptance and payment of bribes and kickbacks; (c) traveling across state lines or using interstate facilities to commit bribery offenses in connection with this scheme; and (d) money laundering involving the proceeds of the crimes I just described.

4. Do any of you believe you have personal knowledge of the charges contained in the Indictment as I have described them?

5. Do any of you have knowledge of, or experience

with, the company Valeant Pharmaceuticals International, Inc.? Do any of you have knowledge of, or experience with, a specialty pharmacy company called Philidor Rx Services, about which you will also hear evidence during this trial? *[If yes: Would anything about that knowledge or experience affect your ability to be fair and impartial in this case?]*

6. Have any of you read or seen news stories about alleged crimes connected to Valeant or Philidor? *[If yes: Would anything that you read or heard affect your ability to be fair and impartial in this case?]*

7. Have you, or any member of your family, now or in the past, been an employee of either Valeant or Philidor? *[If yes: Would anything about that employment affect your ability to be fair and impartial in this case?]*

8. Have you, or has any member of your family, either as an individual, or in the course of business, ever been a party to any legal action or dispute with Valeant or Philidor, or any of such companies' respective officers, directors, or executives? Have any of you had any legal, financial or other interest in any such legal action or dispute, or its outcome?

**Knowledge of the Trial Participants**

9. The defendants in this case are GARY TANNER and ANDREW DAVENPORT. *[Please ask the defendants to rise.]* Do any

of you know, or have you had any dealings, directly or indirectly, with the defendants, or with any relative, friend or associate of any of the defendants?

10. To your knowledge, do any of your relatives, friends, associates, or employers know any of the defendants?

11. The defendant GARY TANNER is represented today by Howard Shapiro, Brendan McGuire, and Matthew Galeotti, of the law firm Wilmer Cutler Pickering Hale and Dorr LLP. The defendant ANDREW DAVENPORT is represented by Jonathan Rosen and Mary Clare Bonaccorsi, of the law firm Polsinelli PC. Do any of you know any of these attorneys or their law firms?

12. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Geoffrey Berman. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Robert Allen, Richard Cooper, and Amanda Kramer, and Paralegal Specialist Peter Urbanczyk (er-ban-zik). [*Please ask the Government attorneys and paralegal to stand.*] Do any of you know Mr. Berman, Mr. Allen, Mr. Cooper, Ms. Kramer, or Mr. Urbanczyk? Have you or your family members or close friends had any dealings either directly or indirectly with them? The Assistant U.S. Attorneys will also be assisted in this case by Special Agent Michael Preis of the

Federal Bureau of Investigation. *[Please ask this individual to rise.]* Have you or your family members or close friends had any dealings either directly or indirectly with Special Agent Preis, or with the FBI? Have you or your family members or close friends had any dealings either directly or indirectly with the United States Attorney's Office?

13. I will now read a list of names of individuals and entities whose names may be mentioned during the trial, or who may be witnesses in this case:

*[The Government will provide the Court with a list of potential witnesses and relevant entities before trial.]*

Do any of you know any of these people? Have you had any dealings either directly or indirectly with any of these individuals?

#### **Relevant Locations**

14. Some of the conduct at issue in this case involves the following properties or locations. *[The Government will provide the Court with a list of properties involved in this case before the trial.]* Are any of you familiar with any of these locations?

**Ability to Render a Fair and Impartial  
Verdict on the Crimes Charged**

15. As you can tell, during the trial, you will hear evidence concerning alleged crimes concerning Valeant's working relationship with Philidor, and Valeant's purchase of Philidor, including fraud, kickback and money laundering offenses. Does the fact that the charges involve these offenses affect your ability to render a fair verdict?

16. Do any of you believe that it should not be a crime for a person to commit fraud against a company?

17. Do any of you believe that it should not be a crime to deprive a company of its right to the honest services of its employees?

18. Do any of you believe it should not be a crime to engage in a conspiracy - in other words, to agree with someone else to violate the law?

19. Do any of you believe that it should not be a crime for a businessperson to solicit or accept bribes or kickbacks?

20. Do any of you believe that it should not be a federal crime to travel across state lines while committing a state crime such as commercial bribery?

21. Do any of you believe that it should not be a

crime to commit money laundering?

22. Do any of you believe that the laws governing the crimes I just described should not be enforced?

23. Have you, or has any member of your family, any associate or close friend, had an experience with the crimes I just discussed that might prevent you from being fair and impartial? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances.]*

24. Do any of you have any religious, philosophical or other beliefs that would make you unable to render a guilty verdict for reasons unrelated to the law and the evidence?

**Relationship with Government**

25. Is any member of your family employed by any law enforcement agency, whether federal, state, or local?

26. Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias, prejudice or other feelings for or against the FBI? For or against the United States Attorney's Office? For or against any other law enforcement agency?

27. Have you, or has any member of your family, either as an individual, or in the course of business, ever been a party to any legal action or dispute with the United States, or with



any of the officers, departments, agencies, or employees of the United States? Have any of you had any legal, financial or other interest in any such legal action or dispute, or its outcome?

**Prior Jury Service**

28. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county or city court? If so, when and where did you serve?

29. Have you ever served as a juror in any court? If so, when, and in what court did you serve, and was it a civil or criminal case? What was the nature of the case? Without saying what it was, did the jury reach a verdict?

**Experience as a Witness, Defendant, or Crime Victim**

30. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you, or any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

31. Have you ever been a witness or a complainant in any federal prosecution or state prosecution?

32. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed in

any criminal case?

33. Have you, has any member of your family, any associate, or close friend, ever been charged with a crime? If so, do you believe that those charges were fairly brought?

34. Have you, or have any of your relatives, associates, or close friends ever been the subject of any investigation or accusation by any federal or state grand jury, or by any congressional committee?

35. Have you, or any of your close friends or relatives, ever been a victim of a crime?

36. Have you, or any of your close friends or relatives, ever been stopped or questioned by any member of the FBI or other law enforcement agency?

*[For each of the preceding questions in this section, as to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances.]*

#### **Law Enforcement Witnesses**

37. The Government witnesses in this case will include law enforcement witnesses. Would any of you be more likely to believe a witness merely because he or she is a law enforcement agent? Would any of you be less likely to believe a witness merely because he or she is a law enforcement agent?

38. Does anyone have any expectations about the types of evidence that the Government will present in this criminal trial, or in a criminal trial more generally?

39. The Government expects to present evidence at this trial that was obtained through judicially-ordered search warrants, including a warrant to search someone's email account. Would any of you have an issue with treating evidence obtained pursuant to a search warrant the same as any other evidence in the case?

40. Would any of you be unable to follow my instruction that the Government is not required to use any particular technique to investigate evidence of a crime?

**Capacity to Serve on Jury**

42. Do any of you have problems with your hearing or vision which would prevent you from giving full attention to all of the evidence at this trial?

43. Are any of you taking any medication, or do any of you have any medical condition, that would prevent you from giving full attention to all of the evidence at this trial?

44. Do any of you have any difficulty in reading or understanding English in any degree?

**Function of the Court and Jury**

45. The function of the jury is to decide questions of

fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not each defendant is guilty as charged in the Indictment. Does any juror have any bias or prejudice or belief that might prevent or hinder him or her from accepting the instructions of law that I will give you in this case?

46. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether each defendant is guilty or innocent?

47. Will each of you accept the proposition of law that sympathy or empathy must not enter into the deliberations of the jurors as to guilt or innocence of the defendants, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of the defendants?

48. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established a

defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

**Other Biases**

49. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, bias, or prejudice – and according to the law as it will be explained to you?

**Juror's Background**

50. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's age;
- b. the area in which the juror resides and any other area the juror has resided during the last ten years;
- c. where the juror was born;
- d. the juror's educational background, including the highest degree obtained;
- e. whether the juror has served in the military;
- f. the juror's occupation;

g. the name and location of the juror's employer, and the period of employment with that employer;

h. the same information concerning other employment within the last five years;

i. the same information with respect to the juror's spouse and any working children;

j. what newspapers, magazines or websites the juror reads and how often;

k. what television programs the juror regularly watches;

l. whether the juror watches "Law and Order," "CSI," or other police dramas; and

m. the juror's hobbies and leisure-time activities and organizations.

**Requested Instruction Following Impaneling of the Jury**

51. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends. This rule also applies to communications online, including emails and all forms of social media. For example, you may not post about this case on Facebook, Instagram, Twitter, Snapchat, or any other social media application, website, or blog.

52. If at any time during the course of this trial,

any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys and the defendants in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

Dated: New York, New York  
March 12, 2018

Respectfully submitted,

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Southern District of New York

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